

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 3:05-cr-068

- vs -

District Judge Thomas M. Rose

Magistrate Judge Michael R. Merz

DAVID C. LETNER,

Defendant.

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**REPORT AND RECOMMENDATIONS**

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This criminal case is before the Court on Defendant's Motion for Relief under the First Step Act.

The first branch of the Motion seeks relief under 18 U.S.C. § 4205(g) or 3582(c)(1)(A) so that Petitioner could provide care for his sister who has a physical disability and for whom he is the only possible caregiver. Those sections of the federal Criminal Code were not modified by the First Step Act and, in any event, do not apply to a federal prisoner on the basis of his or her providing care to someone else. Finally, under § 4205, a request for relief must be made by the Bureau of Prisons, not the prisoner.

The second branch of the Motion seeks relief based on the amendment made in the First Step Act to clarify that the stacking of sentences under 18 U.S.C. § 924(c) only applies to persons who have a prior conviction for violating that same section. This section of the First Step Act does not apply retroactively to persons sentenced before its effective date.

Accordingly, it is respectfully recommended that Defendant's Motion be DENIED.

March 18, 2019.

s/ *Michael R. Merz*  
United States Magistrate Judge

#### **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by mail. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).